

# Exhibit 1

**FILED: NASSAU COUNTY CLERK 10/13/2017 10:29 PM**

INDEX NO. 611175/2017

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 10/19/2017

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

-----X

SOUTH FRANKLIN PHARMACY INC.,

Plaintiff,

**SUMMONS**

The basis of venue is:

NASSAU COUNTY (location of the  
Plaintiff's residence)224 S. Franklin Street,  
Hempstead NY 11550

-against-

EXPRESS SCRIPTS, INC.,

Defendants.

-----X

To the above-named Defendant(s):

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an Answer to the Complaint in this action within twenty days after the service of the Summons, exclusive of the day of service or within thirty days after service is complete if this Summons is not personally delivered to you within the State of New York; upon your failure to answer, judgment will be taken against you for the relief demanded in the Complaint, together with the costs of this action.

Dated: October 7, 2017.  
Brooklyn New York

By:     ?s/ JOSEPH PAUKMAN      
Joseph Paukman, Esq.  
Attorney for Plaintiff  
1407 Avenue Z #612  
Brooklyn NY 11235

Defendants' Address:

EXPRESS SCRIPTS, INC.  
1 Express Way  
St. Louis, MO 63121

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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SOUTH FRANKLIN PHARMACY INC.,

Index No.

Plaintiff,

-against-

**VERIFIED COMPLAINT**

EXPRESS SCRIPTS, INC.,

Defendants.

-----X

Plaintiff, by its attorney, Joseph Paukman, as and for its verified complaint against Defendants alleges as follows:

**NATURE OF THIS ACTION**

- 1) This complaint is brought by Plaintiff against Defendants for proper relief against Defendants' termination of Plaintiff as provider for Emblem Health Medicaid Managed Care, (hereinafter "MMC"), and Health and Recovery Plan (hereinafter "HARP" networks. Plaintiff, South Franklin Pharmacy, Inc., seeks damages and other relief for wrongful termination.

**PARTIES**

- 2) At all times hereinafter mentioned, Plaintiff, SOUTH FRANKLIN PHARMACY INC., is a domestic corporation having a place of business in the county of Nassau at 224 S. Franklin Street, Hempstead NY 11550.
- 3) At all times hereinafter mentioned, Defendant, EXPRESS SCRIPTS INC., is a foreign corporation organized under and existing under the laws of the State of Delaware and is authorized to transact business in the State of New York.

### FACTS

- 4) Defendant, Express Scripts, Inc., is the largest independent pharmacy benefit manager (“PBM”). As a PBM, Express Scripts administers the prescription drug benefit component of its customers’ health insurance plans. Express Scripts also negotiates drug prices with pharmacies and establishes a network of pharmacies through which patients can fill their prescriptions. As part of its core PBM business, the company also provides Medicare Part D-related products and services to Medicare Part D plan sponsors.
- 5) Upon information and belief, Defendant is one of the nation’s leading companies, offering full service pharmacy benefit management services which includes network pharmacy claims processing, developing and maintaining the formulary, mail pharmacy services and developing networks of retail pharmacies with negotiated rates. Defendant’s clients include managed-care organizations, health insurers, employer groups, third party administrators and government sponsored plans (the “Health Plans”).
- 6) The Health plans serviced by Defendant include members who receive benefits from government plans such as Medicaid and Medicare.
- 7) Upon information and belief, Express Scripts Inc. is the nation’s largest PBM, processing approximately 1.5 billion prescription claims annually for the Health Plans.
- 8) Plaintiff entered into a provider agreement (the “Provider Agreement”) with Defendant pursuant to which Plaintiff agreed to fill prescriptions for members of Health Plans for which Defendant serves as the PBM and Defendant agreed to pay Plaintiff for such services.

- 9) Approximately 95% of Plaintiff's customers are insured by Medicaid and/or Medicare ("Government Plans").
- 10) Approximately 5% of Plaintiff's patients who participate in Government Plans are members of Defendant's Health Plans.
- 11) By virtue of the forgoing, Defendant controls approximately 5% of Plaintiff's business generated by Government Plans.

**The Dispute**

- 12) On or about, August 4, 2017, Plaintiff received a letter from Defendant stating that effective September 13, 2017, Plaintiff's pharmacy will no longer be able to process prescriptions for the Emblem Health MMC and HARP members.

**AS AND FOR A FIRST CAUSE OF ACTION**

- 13) Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1 through 12" hereinabove as if it were fully set forth with the same force and effect
- 14) Plaintiff enrolled in and is in good standing with Government Plans and participates as a provider in networks operated by Defendant's competitors, such as Caremark and United Healthcare.
- 15) Defendant's decision to put Plaintiff in a smaller provider network has prevented Plaintiff from servicing Government Plans, is a violation of the 14<sup>th</sup> amendment by Defendant, who is a government agent, and is contrary to the Government Plans' election and other PBM's election to allow Plaintiff to continue to participate as a provider.

- 16) Defendant, as a manager of Government Plans, should reverse its decision to limit the Participating Provider agreement with Plaintiff, permitting Plaintiff to provide services to and bill for services rendered to members of the Government Plans.
- 17) Defendant's limitation of the Provider Agreement is wrongful, irrational, Arbitrary and Capricious with respect to Government Plans. Plaintiff substantially performed pursuant to the terms of the Provider Agreement and was prevented from performing by virtue of Defendant's wrongful breach of the Provider Agreement.
- 18) Defendant breached the implied obligation to act in good faith and fair dealing which underlies every contract and is in violation of the 14<sup>th</sup> amendment.
- 19) By reason of Defendant's wrongful breach of the Provider Agreement, Plaintiff has been deprived of the opportunity to bill approximately 35 of prescription sales per month for patients of Defendant's PBM network and has suffered additional irreparable damages in loss of reputation, good will and business opportunities.
- 20) By reason of the foregoing, Plaintiff seeks judgment awarding damages in the sum of \$1,000,000.00.

**WHEREFORE**, It is respectfully requested that this Court grant judgment in favor of Plaintiff and against Defendant as follows; (i) \$1,000,000.00; (ii) A Judgment awarding reasonable attorney's fees, costs and disbursements of the action and (iii) for such other relief as this Court deems just and proper.

Dated: October 9, 2017  
Brooklyn N.Y.

By: /s/ JOSEPH PAUKMAN  
Joseph Paukman, Esq.  
Attorney for Plaintiff  
1407 Avenue Z # 612  
Brooklyn N.Y. 11235  
(718) 736-4050


VERIFICATION

GREG KONNY, being duly sworn, deposes and says:

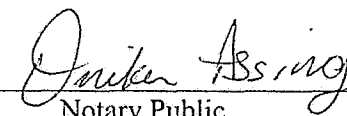
I am a president of the Plaintiff in this action. I have read the foregoing Summons and Verified Complaint. The matters stated in the document are true of my own knowledge except those matters stated on information and belief, and as to those matters, I believe them to be true. To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions therein are not frivolous as defined in Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrative Judge (22 NYCRR).

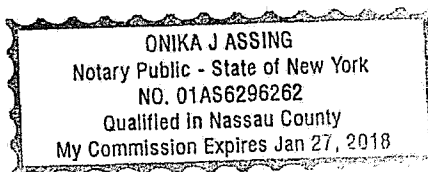
Dated: Brooklyn, New York  
October \_\_, 2016

SOUTH FRANKLIN PHARMACY INC.,

  
By: Greg Konny

Sworn to me this 11  
day of October, 2017.

  
Notary Public



**FILED: NASSAU COUNTY CLERK 10/23/2017 04:25 PM**

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NYSCEF DOC. NO. 2

RECEIVED NYSCEF: 10/23/2017

## AFFIDAVIT OF SERVICE

Case: 611175/2017	Court: SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NASSAU	County:	Job: 1747860
Plaintiff / Petitioner: SOUTH FRANKLIN PHARMACY INC.		Defendant / Respondent: EXPRESS SCRIPTS INC	
Received by: MISSOURI PROCESS SERVING, LLC		For: JP LEGAL	
To be served upon: EXPRESS SCRIPTS			

I, Pam King Wheelley, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the State where service was effected, I was authorized by law to make service of the documents and informed the said person of the contents herein.

I have served the attached documents by:

\_\_\_ delivering a copy of the service documents to the Defendant.

\_\_\_ leaving a copy of the service documents at the dwelling place or usual abode of the Defendant with the person identified below, who is a person over the age of 15 years.

X (for service on a corporation) delivering a copy of the service documents to the person identified below.

\_\_\_ Documents could not be served due to lack of contact with the subject.

SERVED IN ST LOUIS COUNTY AND IN THE STATE OF MO

Recipient Name / Address: AERIAL MITCHELL- HR, Corporate: 1 Express Way, Saint Louis, MO 63121

Manner of Service: Authorized, Oct 20, 2017, 1:52 pm CDT

Documents: SUMMONS, VERIFIED COMPLAINT (Received Oct 20, 2017 at 12:00am CDT)

## Additional Comments:

1) Successful Attempt: Oct 20, 2017, 1:52 pm CDT at Corporate: 1 Express Way, Saint Louis, MO 63121 received by AERIAL MITCHELL- HR. Age: 35; Ethnicity: African American; Gender: Female; Weight: 130; Height: 5'5"; Hair: Black; Eyes: Brown;

Pam King Wheelley 10-21-17  
PAM KING WHEELEY Date  
PROCESS SERVER, IL PERC - 129396357,  
ST LOUIS CITY PROCESS SERVER ID #  
650, KCMO PPS 17-0054

MISSOURI PROCESS SERVING, LLC  
1430 Washington Ave Suite 220  
St Louis, MO 63103  
314-520-3590

Subscribed and sworn to before me by the affiant who is  
personally known to me.

[Signature]  
Notary Public  
10-21-17 9-18-21  
Date Commission Expires

